



PURCHASE ORDER GENERAL TERMS & CONDITIONS

The Brandt Companies, LLC (“Brandt”) Purchase Orders are for the purchase by Brandt of goods/materials only. Contracts for services (including T&M) or labor only from vendors must be placed on the appropriate Brandt contract.

- 1) The acceptance of any Brandt purchase order is expressly limited to the terms herein and any additional or different terms suggested by Seller are hereby rejected unless expressly agreed to in writing by the Buyer. Upon performance by Seller, this order shall constitute a valid and binding contract which shall be governed by and construed according to the laws of the State of Texas (a Uniform Commercial Code State).
- 2) When indicated, shipment of goods will be made by the method, carrier and / or routing specified on the Purchase Order. Notwithstanding the FOB terms specified on the Purchase Order, the point of passage of title, any shipping instructions, bill of lading, or any contrary provision of law, Seller agrees to assume the entire risk of loss during shipment and Seller agrees to pay any and all loss or damage to the goods from any cause whatsoever until Buyer or its designee receives the goods at the point of ultimate destination. Seller shall carry sufficient insurance on the goods, insuring Seller and Buyer as their interests may appear, so that any losses will be covered by insurance. Seller shall package all goods for safe shipment to the Buyer and in accordance with carrier's requirements.
- 3) In addition to any other warranties, express, implied or statutory which may apply to the goods or services or both being purchased and sold under this order, Seller warrants to Buyer as follows: (i) the goods and any services covered by this order will correspond with the description of the same on the face hereof, will conform to all applicable plans and specifications, will be new and of the best quality unless otherwise specified, will be free of defects in materials and workmanship and will be fit for the purpose for which they are to be used; (ii) said goods and any services covered by this order are free and clear of all liens and encumbrances whatsoever and Seller has a good and marketable title to same; (iii) the goods and services covered by this order comply with all applicable federal, state, and local laws, government orders and regulations, including but not limited to all federal and state occupational safety and health standards and building codes; and (iv) the manufacture, sale, or use of the goods and any services covered by this order, whether manufactured in accordance with Buyer's specifications or otherwise, do not and will not infringe upon any patent, trademark, or copyright.
- 4) Seller agrees to replace, without charge to Buyer, immediately upon notice by Buyer, any defective or nonconforming material and equipment and remedy any defects, not due to ordinary wear and tear or improper maintenance, which may develop within one (1) year from date of acceptance by Owner, or within the guarantee period set forth in applicable plans and specifications, whichever is longer.
- 5) Notwithstanding any terms or conditions provided by the transporter of the goods, Buyer shall have the right, but not the obligation, to inspect or test the goods or services upon receipt or completion. If the goods or services are to be incorporated into a construction project or operating facility, then Buyer's inspection and testing of the same may be made after installation or completion. If any of the goods or services are found to be nonconforming, defective, of inferior quality or workmanship, not as warranted or guaranteed or fail to meet any other requirements of this order (regardless of whether Buyer has inspected, tested or paid for the same), then, in addition to any other rights or remedies available at law or in equity, Buyer shall have the right to cancel this order and return the goods, or reject the services, or any part thereof, and recover from Seller all amounts

paid by Buyer to Seller on account of the purchase price of such goods or services, together with any costs incurred by Buyer in connection with the original delivery or return or rejection of such goods or services.

- 6) When delivering goods, the Seller's driver is required to wear appropriate PPE for the location at all times on the jobsite and immediately on arrival must contact the designated Brandt representative or authorized person, who shall evaluate the load to ensure it is in a stable condition for unloading. If the designated Brandt representative determines that the load is unstable, the delivery shall be rejected and returned to the vendor. If the load is determined stable, the delivery driver shall prepare the vehicle for unloading by removing straps, locks, blocks, gates, panels, etc., whether it is to be unloaded by hand or by mechanical means (e.g. forklift, crane, etc.). When preparation is finished, the driver shall re-enter and remain in the cab of the vehicle for the duration of the unloading process. However, in circumstances where the material must be moved over top of the cab during the unloading process, the driver shall remain outside of the cab in a safe area and at a safe distance from the vehicle, mechanical equipment, and the material as it is unloaded. The safe area and distance shall be determined by the delivery driver and the designated Brandt Representative. After the material has been completely unloaded, and the area is safe, the driver may exit the cab or return from the safe area to secure the vehicle and all loading and tie-down materials prior to leaving the unloading area.
- 7) Material and equipment furnished under this order shall be subject to approval of the architect and/or engineer, general contractor and Owner and Seller shall timely furnish the required number of submittal data or samples & electronically formatted data. This order is placed with the agreement that the material and / or equipment should be supplied of the type and in such a manner as to meet the requirements of plans and specifications. In the event the equipment does not meet the foregoing requirements, Seller shall immediately, upon receiving notice, replace same or remedy any deficiency without expense to Buyer. Seller shall not make any changes in the quantity, quality or specifications of the goods or the services, nor in any other terms or conditions of this order, without the prior written consent of Buyer. Buyer shall have the right at any time to change any item of this order by written notice to Seller. If any such change results in a delay or an increase or decrease in expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment, provided, however, that Seller shall in all events proceed diligently to perform the work or services or supply the item contracted for under this order as so changed. Any claim by Seller for adjustment must be submitted to Buyer in writing within ten days from the date of the change notice and any such claim must be accompanied by an estimate of the increase or decrease in expenses resulting from such change.
- 8) If this order covers goods manufactured or fabricated to Buyers specifications or specifications especially prepared by Seller for Buyer then Buyer may terminate this order in whole or in part by giving written notice to Seller at any time prior to delivery of all goods covered by this order as follows: (i) upon receipt of such notice, Seller shall stop all work in connection with this order except as otherwise directed by Buyer, (ii) Seller shall be entitled to receive Seller's actual direct out-of-pocket costs involved in terminating the work, limited restocking fees, plus a reasonable amount for overhead and profit, not to exceed ten percent of direct out-of-pocket costs. If the goods covered by this order are standard stock merchandise, Buyer may terminate all or any part of the unshipped portion of this order at any time by written notice to Seller, and in such event, Buyer shall have no further obligation for cancellation charges or otherwise hereunder except to make payment subject to other applicable terms hereof, for the goods actually shipped in transit prior to such termination. Payment and discount periods shall commence after receipt of both the material and proper invoice or invoices as designations specified in this Purchase Order. The Buyer reserves the right to return to the Seller for correction any and all invoices containing error and / or not in agreement with this Purchase Order.
- 9) Seller shall furnish maintenance, instruction, operation and / or installation manuals for all equipment which Seller is to supply hereunder in electronic format. Purchase Order shall not be considered complete until Buyer

has obtained and approved copies of the appropriate maintenance, instruction, operation and / or installation manuals for equipment in electronic format.

- 10) Seller shall furnish, if requested by the Buyer, all necessary lien waivers, affidavits or other documents required, in a form satisfactory to the Buyer, to keep owner's premises free from liens or claims for liens, arising out of the furnishing of the material or equipment herein. Such lien waivers, affidavits or other documents so requested may be conditioned upon receipt of payment for materials or equipment covered thereby, if payment has not been received by Seller.
- 11) Seller shall not assign or transfer this order, or any part thereof, or any amount due and payable or to become due and payable hereunder, without the written consent of the Buyer. Any such assignment or transfer without written consent shall be null and void. If Buyer grants any such consent, such consent shall not be deemed to have released Seller from any of its warranties, agreements or other obligations hereunder.
- 12) Seller shall protect, indemnify and save harmless the Buyer from and against all claims, liability, loss, damage, or expense, including attorney's fees arising out of any actual or alleged infringement of any patent or license covering any article purchased hereunder, and arising out of the death or injury to any person or damage to any property alleged to have resulted from the material or equipment hereby ordered or the delivery thereof or from any services provided by Seller. Upon notification by Buyer of any such claim, demand or suit, Seller shall defend the same at Seller's sole expense, including, but not limited to all costs, fees and damages.
- 13) The following insurance requirements shall apply: (a) Seller shall be required to furnish insurance and satisfactory evidence thereof to Buyer. A Seller must, at its cost, maintain at all times: (i) Commercial General Liability Insurance of at least \$1,000,000 for each occurrence, (ii) Comprehensive Automobile Liability Insurance, including hired automobile and employer's non-ownership liability of at least \$1,000,000 for each occurrence, (iii) Worker's Compensation Insurance, with the limits required under applicable law, and (iv) Employers Liability of at least \$1,000,000. Seller shall provide Buyer with a certificate of insurance evidencing coverage that includes a 30-day written notice of cancellation to Buyer, a non-owned vehicle endorsement, waiver of subrogation, and Buyer and Owner as additional insureds. Buyer may elect to secure insurance to protect itself and withhold payment until all provisions of this paragraph are met. In the event Buyer is subject to additional insurance cost due to failure of Seller to comply with this paragraph, said amount will be deducted from Purchase Order; (b) Applications for monthly progress payments shall be in writing and on a form provided by Buyer and shall state the estimated percentage of the work in this Purchase Order that has been satisfactorily completed; and (c) Ten per cent shall be retained on each progress payment with final payment due when the work is completed and accepted by owner or engineer and after final payment has been received by Buyer. If Seller has a right of recovery for loss or damage, Buyer is subrogated to any right of Seller to recover.
- 14) TIME OF DELIVERY IS THE ESSENCE OF THIS ORDER. The Buyer reserves the right to cancel without cancellation or any other charge, all or any part of this order if not filled within the specified time and to request delay damages. Such right of cancellation shall not be deemed a waiver of any right reserved to the Buyer herein or by law for any delay or failure to deliver as specified.
- 15) In the event of any default or breach of any of the terms or conditions of this Purchase Order by Seller, or in the event of any proceedings by or against Seller in bankruptcy or insolvency or for appointment of any receiver or trustee or any general assignment for the benefit of creditors, Seller agrees to pay all costs resulting therefrom, including but not limited to, reasonable attorneys' fees and Buyer may, in addition to any other remedy provided by law, equity or elsewhere in this Purchase Order, terminate, by written notice, all or any part of this Purchase Order, procure the materials, equipment or services provided for herein elsewhere, on such terms and

under such conditions as are reasonable in the sole discretion of Buyer, and Seller shall be liable to pay to Buyer any excess cost or other damages caused Buyer as a result thereof.

- 16) All prior representations, conversations, or preliminary negotiations shall be deemed to be merged in this order. This order together with any written documents which may be incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all prior oral or written communications with respect to the subject matter hereof.
- 17) This order shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, administrators, executors, and legal representatives, provided that nothing contained in this paragraph shall be construed so as to authorize Seller to make any assignment to transfer prohibited by paragraph 10 above.
- 18) If any claims that arise under this order, or as a result of any cancellation hereof, then the non-prevailing party shall be obligated to reimburse the prevailing party for its attorneys' fees and expenses incurred in connection with any mediation or arbitration proceeding. The parties agree that the method of resolving said claims shall be limited to dispute resolution proceedings. Mediation shall be a condition precedent to binding arbitration. Any dispute under this order shall be governed by the laws of the State of Texas without regard to laws relating to conflict of laws. Buyer and Seller agree that any appropriate state or federal district court located in the City of Dallas, Texas, shall have exclusive jurisdiction.
- 19) Regarding domestic materials, Seller is responsible for complying with the Buy American Act (41 U.S.C. §§ 10a-10c), as applicable.